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March 7, 2005

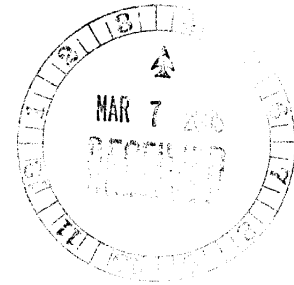
BY HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

ENTERED
Office of Proceedings

MAR 7 2005

Part of
Public Record



Re: Docket No. AB-6 (Sub-No. 335X), BURLINGTON NORTHERN RAILROAD COMPANY – ABANDONMENT EXEMPTION – BETWEEN KLINKITAT AND GOLDENDALE, WA

Docket No. AB-6 (Sub-No. 346X), BURLINGTON NORTHERN RAILROAD COMPANY – ABANDONMENT EXEMPTION – IN KLINKITAT COUNTY, WA

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceedings are an original and ten copies of “**BNSF Railway Reply in Opposition to Petition to Reopen Docket Nos. AB-6 (Sub-Nos. 335X and 346X), TO DECLARE CERTAIN RIGHT-OF-WAY SEGMENTS *DE JURE* ABANDONED, TO DECLARE THE REMAINING RIGHT-OF-WAY SEGMENT *DE FACTO* ABANDONED, AND TO REVOKE AUTHORITY FOR TRAIL USE DUE TO LOSS OF FEDERAL JURISDICTION.**”

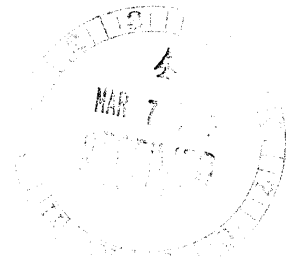
Please date stamp the enclosed extra copy and return it in the enclosed self-stamped envelope.

Sincerely yours,

Sidney L. Strickland, Jr.

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



**Docket No. AB-6 (Sub-No. 335X)
BURLINGTON NORTHERN RAILROAD COMPANY – ABANDONMENT
EXEMPTION – BETWEEN KLINKITAT AND GOLDENDALE, WA**

**Docket No. AB-6 (Sub-No. 346X)
BURLINGTON NORTHERN RAILROAD COMPANY – ABANDONMENT
EXEMPTION – IN KLINKITAT COUNTY, WA**

**BNSF RAILWAY REPLY IN OPPOSITION TO PETITION
TO RE-OPEN DOCKET NOS. AB-6 (SUB-NOS. 335X AND 346X),
TO DECLARE CERTAIN RIGHT-OF-WAY SEGMENTS *DE JURE* ABANDONED,
TO DECLARE THE REMAINING RIGHT-OF-WAY SEGMENT *DE FACTO* ABANDONED, AND TO
REVOKE AUTHORITY FOR TRAIL USE DUE TO LOSS OF FEDERAL JURISDICTION**

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Dated: March 7, 2005.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**Docket No. AB-6 (Sub-No. 335X)
BURLINGTON NORTHERN RAILROAD COMPANY – ABANDONMENT
EXEMPTION – BETWEEN KLICKITAT AND GOLDENDALE, WA**

**Docket No. AB-6 (Sub-No. 346X)
BURLINGTON NORTHERN RAILROAD COMPANY – ABANDONMENT
EXEMPTION – IN KLICKITAT COUNTY, WA**

**BNSF RAILWAY REPLY IN OPPOSITION TO PETITION
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REVOKE AUTHORITY FOR TRAIL USE DUE TO LOSS OF FEDERAL JURISDICTION**

INTRODUCTION

By Petition filed February 7, 2005, Tracy and Lorraine Zoller, William Giersch, David and Kristen Mattson, and Allen Tooke (“Petitioners”) request that the Surface Transportation Board (“Board”) reopen the above-captioned proceedings, claiming “new evidence and substantially changed circumstances” show Burlington Northern and Santa Fe Railway Company (Now BNSF Railway Company “BNSF”) has sold its interests to full-width right-of-way on two segments of the “Klickitat Branch line” located in Klickitat County, Washington, thereby disconnecting from the interstate railway system that portion of the Klickitat Branch Line that had been “rail banked” under the Trails Act, 16 U.S.C. § 1247(d).

Contrary to Petitioners’ speculation, there is no “new evidence and substantially changed circumstances” that would support the Board’s reopening of Docket Nos. AB-6 (Sub-No. 335X)

and AB-6 (Sub-No. 346X), in as much as there have not been sales that severed the railbanked property in question from the interstate rail system.

BACKGROUND

These proceedings involve properties railbanked by the Interstate Commerce Commission ("ICC") in abandonment proceedings BNSF's predecessor, Burlington Northern Railroad Company ("BN"), initiated in September 1991 in Docket No. AB-6 (Sub-No. 335X) for authority to abandon 28.30 miles of line from Klickitat (Milepost 13.80) to Goldendale, WA (Milepost 42.11); and in December 1992 in Docket No. AB-6 (Sub-No. 346X) for authority to abandon 13.90 miles of line from Lyle (Milepost -0.10) to Klickitat, WA (Milepost 13.80). By decision served July 6, 1994, ("July 1994 Final NITU Decision") the ICC issued a single decision for both proceedings which modified earlier notices of interim trail use ("NITU") as follows: (1) In Docket AB-6 (Sub-No. 335X), the ICC authorized BN to abandon the portion of the line from milepost 30.8 to the end of the line at milepost 42.11 and an NITU reissued for the portion of the line from milepost 13.8 at Klickitat to approximately milepost 30.8 at Warwick; and (2) In Docket AB-6 (Sub-No. 346X), the ICC authorized BN to abandon the portion of the line from milepost -0.10 to approximately milepost 0.38 at Lyle, and an NITU reissued for the portion of the line from approximately milepost 0.38 at Lyle to milepost 13.80 at Klickitat. The Final 1994 NITU Decision was subject to specified conditions.

This more than 30 miles of right-of-way that the Final 1994 NITU Decision authorized for railbanking constitutes the Klickitat Trail. The Rails to Trails Conservancy ("RTC") initially assumed responsibility for interim trail use and rail banking of the two line segments. The Washington State Parks and Recreation Commission now owns the Klickitat Trail and the US

Forest Service administers the Klickitat Trail.

Nearly nine years after the final 1994 NITU decision and continuous railbanking of the Klickitat Trail, BNSF made sales of excess real estate near the Lyle terminus of the Klickitat Trail but never took any actions contrary, or otherwise deleterious, to the railbanked status of the Klickitat Trail. Indeed, contrary to Petitioners' assertions, BNSF retained a right of way corridor that connects the Klickitat Trail to the national rail system:

(1) On May 29, 2003, BNSF sold 0.728 acres of real estate at Lyle to the Rutledge Hotel Company. This sale extends from Milepost 0.27 to Milepost 0.38 and consists of the northeasterly 50 feet of the right of way between the two mileposts. Following this sale, BNSF retained at least 50 feet of the right-of-way which connects the Klickitat Trail with BNSF's main line at Lyle.

(2) On August 5, 2004, BNSF sold an additional 0.07 acre of real estate at Lyle to the Rutledge Hotel Company. This sale extended from Milepost 0.33 to Milepost 0.38 and was shaped as a sliver. The sale was 0 feet wide at Milepost 0.33 and 21.59 feet in width at the south side of State Highway 14. Following the second sale to Rutledge Hotel Company, a 28.41 foot wide rail corridor remained which connects the Klickitat Trail with BNSF's main line and the National Rail System. Also, BNSF continues to retain an easement through State Highway 14 that connects directly with the Klickitat Trail.

The Petition to Reopen is premised on incorrect information related to parcels 2 through 5, 8 and 9. (See Richard Batie V.S. p. 10-11). For example, as to parcel 2, the Craig Trummel Declaration, on page 3, states in item 9: "Highway 14 is located immediately south of the trail

and runs in a north-east/south-west direction.” This statement is not accurate. State Highway 14 runs in a northwest/southeast direction (See Richard Batie V.S. p. 10 and Exhibit B, US Geological Service map of Lyle and the surrounding area). Trummel’s schematic Exhibit C shows parcel 3 abutting parcel 4, when, in fact, there is a minimum of 28.41 feet of BNSF owned right-of-way that connects the Klickitat Trail with BNSF’s main line and the National Rail System. (See Batie Exhibit C). The Trummel Declaration also states as to parcel 4 in item 11: “To the east of the property of Greg Colt Land Brokers, Inc., and abutting the south edge of Highway 14, is property owned by Western Estates.” This statement is also inaccurate. Western Estates owns property east of Greg Colt Land Brokers Inc., but the properties do not abut each other. Located between the two parcels is BNSF’s retained 28.41-foot right-of-way which connects the Klickitat Trail with BNSF’s main line and the National Rail Network. (See Richard Batie V.S. p. 10). Furthermore, the Trummel Declaration includes similar misleading schematics and statements regarding parcels 5, 8, and 9. (See Richard Batie V.S. p. 10-11).

BNSF continues to own a rail corridor that is, at a minimum, 28.41 feet in width on the southwest side of State Highway 14 at Milepost 0.38. This BNSF owned right-of-way at Milepost 0.38 combined with BNSF’s easement crossing State Highway 14 maintains the Klickitat Trail connection with BNSF’s main line at Lyle.

In summary, BNSF made two sales of excess real estate along its right of way between the main line at Lyle and the beginning of the Klickitat Trail. However, as noted above, following both sales, connectivity of the Klickitat Trail to BNSF’s main line at Lyle and the National Rail System was retained should rail service need to be reactivated over the Klickitat Trail in the future. Petitioners have misconstrued or misstated the facts to support their

contention that the Klickitat Trail has been severed from the National Rail System. BNSF has retained existing easements and other property rights that permit the continuing connection of the railbanked Klickitat Trail and the National Rail System and has never done anything to show an intent to abandon the connecting corridor.

ARGUMENT

I. The Board Should Not Re-Open this Matter Because Petitioners Have Not Met Their Burden of Showing There Is New Evidence or Substantially Changed Circumstances That Preclude the Klickitat Branch Line from Continuing to Be “Railbanked” under Federal Law.

Under 49 CFR 1152.25(e)(4), a petition to reopen must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances. The Board will grant a petition to reopen only upon a showing that the challenged action would be materially affected by one or more of those criteria. 49 CFR 1152.25(e)(2)(ii). Although the Board’s regulations allow the filing of a petition to reopen any administratively final decision, the need for administrative finality dictates that the hurdle to be overcome by such a petitioner increases substantially as time passes. See, CSX Transportation, Inc. Abandonment Between Bloomingdale and Montezuma, in Parke County, STB Docket No. AB-55 (Sub-No. 486) et al., slip op. at 8 n. 10 (STB served Sept. 13, 2002), aff’d sub nom. Montesuma Grain Co., LLP v. STB, 339 F.3d 535 (7th Cir. 2003). In addition, once an interim trail use/rail banking has commenced, as here, the burden is on the landowners or other interested persons seeking to disrupt an established rail banking/interim trail use arrangement to show that active rail service cannot be restored. See Central Kansas Railway, Limited Liability Company – Abandonment Exemption – In Marion and McPherson Counties, KS, STB Docket No. AB 406

(Sub-No. 6X) (STB served December 2, 1999, slip op. at 6-7 (“Central Kansas”), citing Idaho N & Pac. R.R. – Abandonment & Discontinuance Exemption – In Washington & Adams Counties, Idaho, STB Docket No. AB-433 (Sub-No. 2X) (STB served April 1, 1998) and T&P Ry. – Abandonment Exemption – In Shawnee, Jefferson & Atchison Counties, Kan., STB Docket No. AB-381 (Sub-No. 1X) (STB served Feb. 7, 1997).

The Board should find that Petitioners fail to meet their burden and deny the Petition to Reopen.

Here, Petitioners have failed to establish either that the right-of-way has been severed or any adverse effect of such severance on the continued availability of the railbanked corridor for future reactivation of potential rail service. Petitioners also have failed to submit persuasive evidence of any abandonments.

Petitioners now more than ten years after the Klickitat Trail was established, contend (Petition at. 10) that BNSF severed the line when BNSF allegedly conveyed Parcels 3, 4, and 5 into private hands. (Compare Trummel Decl., Exhibit C, ¶¶ 10-12 with Richard Batie VS p. 10-11.) However, upon closer review, the following is evident: BNSF made real estate sales along a segment of the right-of-way at Lyle but, importantly, retained a portion of the right-of-way that connects the Klickitat Trail to the National Rail System. Specifically, there was a May 29, 2003 BNSF sale of 0.728 acres of real estate at Lyle to the Rutledge Hotel Company, extending from Milepost 0.27 to Milepost 0.38 and consisting of the northeasterly 50 feet of the right-of-way between the two mileposts. However, BNSF retained at least 50 feet of the right-of-way which connected the Klickitat Trail with BNSF’s main line at Lyle. See Richard Batie V.S.

p. 5.

Similarly, there was an August 5, 2004 BNSF sale of an additional 0.07 acre of real estate at Lyle to the Rutledge Hotel Company, extending from Milepost 0.33 to Milepost 0.38 and was shaped as a sliver. The sale was 0 feet wide at Milepost 0.33 and 21.59 feet in width at the south side of State Highway 14. Following the second sale to Rutledge Hotel Company, a 28.41 foot wide BNSF owned right-of-way remained which connects the Klickitat Trail with BNSF's main line and the National Rail System.

BNSF also continues to retain an easement through State Highway 14 that connects directly with the Klickitat Trail.

Thus, contrary to Petitioners' suggestions otherwise, prior to and subsequent to the proceedings in Sub. No. 335X and 346X, the railbanked portions of the Klickitat Branch Line have remained connected to the interstate railway system in the area of Lyle, even after BNSF sold portions of its interests in the right-of-way to the Rutledge Hotel Company. BNSF has not severed the connection between the end-point at Lyle and the still-operating BNSF right-of-way located south of Highway 14. Petitioners have simply failed to submit new evidence showing a severance.

Similarly, Petitioners fail to show any abandonment. In this regard, Courts have consistently recognized that the mere desire of the railroad to enter into or continue railbanking/interim rail use negotiations is evidence that a railroad does not intend to abandon. See Birt. v. STB, 90 F.3d 580, 586-7 (D.C. Cir. 1996). And, here, the ICC authorized the line to be railbanked and the line has remained railbanked for over a decade.

It is also well settled that the mere sale of property along the right-of-way does not

compel the conclusion that a railroad has abandoned a line. Indeed, the Board has emphasized that it has long found that “it is consistent with the common carrier obligation of a railroad . . . to sell underlying assets of rail line while retaining an easement that is sufficient for carrying out rail operations” and that a railroad’s transfer of underlying real property and track while retaining sufficient rights to access, maintain, operate, and renew the line in no way impairs the ability to meet common carrier obligations. See Central Kansas p. 5, n. 8.

In summary, Petitioners have not met their burden of showing that the circumstances have substantially changed since the time of the *July 1994 NITU* decision. Accordingly, the Board should: (1) deny Petitioners’ request to reopen the ICC’s Final *July 1994 NITU decision*; (2) find that BNSF has not *de jure* abandoned the right-of-way at Lyle; (3) find that BNSF has not *de facto* abandoned the right-of-way for railroad use under federal law between mileposts 0.38 and 30.8; (4) and not revoke the authorization for railbanking of the subject line pursuant to a finding that this Board has lost jurisdiction over the Klickitat Trail.

II. Petitioners Misapply *RLTD Railway Corp. v. STB*, 166 F.3d 808 (6th Cir. 1999) to the Present Proceedings.

Petitioners’ misapply *RLTD Railway Corp. v. STB*, 166 F.3d 808 (6th Cir. 1999) (“RLTD”) as support of their contention that the STB has lost jurisdiction over the railbanked properties in issue because of an alleged severance of the railbanked property from the national rail system. First, the Court in the RLTD case held:

It is reasonable for the STB to conclude that it loses jurisdiction when a track is no longer part of the interstate rail network and may not issue a trail condition unless it determines that the “over-riding interests of interstate commerce require” assumption of jurisdiction. *Id.* At 814.

The Court in RLTD made several points that clearly distinguish the context of the above passage

from applicability to the present case. First, in the RLTD case, the STB argued to the court that “petitioners’ reliance upon the Trails Act is misplaced because the only issue is whether the STB has jurisdiction over the Leelanau Line in the context of an abandonment proceeding, and thus . . . implicates the Trails Act only secondarily.” This highlights the Court’s view that the key concern to the Court and the STB in RLTD was whether the STB had jurisdiction over the Leelanau Line at the outset for abandonment purposes with little relevance to such jurisdiction in the event of an NITU order being issued. The Court thus properly noted that when the STB determined jurisdiction was lacking, it was jurisdictionally not possible to reach the Trails Act issue. Here, the opposite is true. The ICC/STB has exercised jurisdiction over the lines in question and, in fact, issued the July 1994 NITU decision. Thus, the present case implicates the Trails Act directly, not secondarily.

Another distinguishing factor, is that -- because the ICC/STB issued the July 1994 -- there is significant legal import as to the ICC/STB’s continuing jurisdiction over its own orders and there is significant triggering of legal rights of reversionary land owners with respect to the triggering of a “taking.”

As to the ICC/STB jurisdiction issue, the cases are legion that the ICC/STB retains jurisdiction over a railroad right-of-way until it has been abandoned pursuant to the conditions imposed by the agency. See Charles, Et. Al v. Texas Mexican Railway Company, 2005 U.S. App. Lexis 2495 (U.S.C.A. 5th Cir.) filed February 9, 2005, citing Lucas v. Township of Bethel, 319 F. 3d 595, (U.S.C.A. 3rd Cir. 2003) at 603. Importantly, in an abandonment proceeding in which an NITU decision is issued, the STB retains jurisdiction over the right-of-way corridor for possible future railroad use and the abandonment of the corridor is blocked “even though the conditions for abandonment are otherwise met.” Nat’l Ass’n of Reversionary Prop. Owners (“NARPO”) v. STB,

332 U.S. App. D.C. 325, 158 F. 3d 135 (D.C. Cir. 1998). Accordingly, the STB retains exclusive and plenary jurisdiction over the railbanked corridor; and, pursuant to 16 U.S.C. 1247(d) of the Trails Act, the STB is not to permit abandonment or discontinuance inconsistent or disruptive of the railbanked use. The NITU permits the railroad to discontinue service, cancel tariffs, and salvage track and other equipment, consistent with the interim trail use and rail banking without consummating an abandonment and the NITU extends indefinitely to permit interim trail use.

Another significant distinction worth noting with respect to the ICC/STB issuance of an NITU is that the U.S. Court of Appeals for the Federal Circuit has found that the STB's issuance of an NITU decision is the triggering event for any claim under the Trails Act. Thus, here, petitioners' claims for relief with respect to any "taking" as a result of the July 1994 NITU issuance, are most probably barred by the statute of limitations under 28 U.S.C. 2501. See William B. Caldwell, III, Et. Al. v. United States, 391 F. 3d 1226 (Fed. Cir. 2004).

In sum, the RLTD decision has little significance to a case, as here, in which an NITU has been issued. In RLTD, the severance had occurred before the STB had issued any orders, with conditions, with respect to rail lines under review. In the present proceeding, an NITU decision was issued nearly a decade ago, with rights to raise "taking" issues pursuant to appeals of the NITU decision being triggered and the ICC/STB jurisdiction to ensure NITU statutory requirements are being met, continuing. The implication of ICC orders with specified conditions such as NITU decisions are of major import, clearly distinguishable from the orders involved in the RLTD decision.

III. The Trails Act, Post ICCTA Statutes, Regulations and National Transportation Policies Permit the Klickitat Branch Line to Continue to Be “Railbanked” under Federal Law, Even if There Had Been a Severance of the Railbanked Property from the National Rail System.

There are significant national policies that support the exercise of STB jurisdiction over such railbanked property, even if the railbanked property is subsequently severed from the national rail system after an NITU is issued and a right of way railbanked. First, the RLTD decision that Petitioners rely upon expressly notes the STB has a vehicle to exercise jurisdiction when in the judgement of the STB, “the over-riding interest of interstate commerce require it.” See RLTD at 813, quoting Kalo Brick & Tile, 450 U.S. at 320. Similarly, the Trails Act provides that “The Secretary of Transportation, the Chairman of the Surface Transportation Board, and the Secretary of the Interior, in administering the Railroad Revitalization and Regulatory Reform Act of 1976, shall encourage State and local agencies and private interests to establish appropriate trails using the provisions of such programs. The Trails Act also emphasizes that there is a national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise. . . [16 USCS §§ 1241 et seq.], and shall not permit abandonment or discontinuance inconsistent or disruptive of such use. Finally, the National Transportation Policy 49 U.S.C. 10101 states, among other things, that it is the policy of the United States Government to promote a safe and efficient rail transportation system and to ensure the development and continuation of a sound rail transportation system.

The Supreme Court has observed long ago that “The National Transportation Policy,

formulated by Congress, specifies in its terms that it is to govern the Commission in the administration and enforcement of all provisions of the Act,” and the Supreme Court has styled the National Transportation Policy as “the yardstick by which the correctness of the Commission’s actions will be measured.” Schaffer Transp. Co. v. United States, 355 U.S. 83, 87-88 (1957). The Supreme Court has also emphasized long ago that a Federal Agency, faced with new developments or in light of reconsideration of the relevant facts and its mandate, may alter its past interpretations and overturn past administrative rulings and practice. Compare SEC v. Chenery Corp., 332 U.S. 194 (1947); FCC v. WOKO, 329 U.S. 223 (1946).

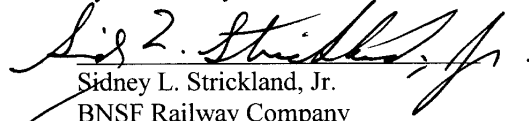
In sum, there are several over-riding National Policy interests and reasons for the STB to exercise jurisdiction over railbanked properties, even if they are severed after an NITU is issued.

CONCLUSION

For the foregoing reasons, the Board should deny Petitioners’ requests.

Respectfully submitted this 7th day of March, 2005.

By: Sidney L. Strickland, Jr.



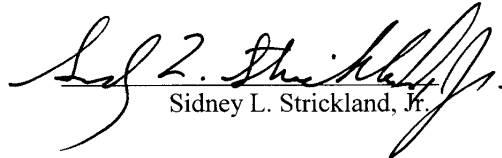
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Sidney.Strickland@BNSF.com

CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2005, I served the foregoing "**BNSF RAILWAY REPLY
IN OPPOSITION TO PETITION TO RE-OPEN AB-6 SUB. NOS. 335X AND 346X, TO DECLARE
CERTAIN RIGHT-OF-WAY SEGMENTS *DE JURE* ABANDONED, TO DECLARE THE REMAINING
RIGHT-OF-WAY SEGMENT *DE FACTO* ABANDONED, AND TO REVOKE AUTHORITY FOR TRAIL
USE DUE TO LOSS OF FEDERAL JURISDICTION**", by first class mail, postage prepaid, on the
following:

Charles Montange, Esq.
426 NW 162nd Street
Seattle, Washington 98177

Cecilia Fex
ACKERSON KAUFFMAN FEX, PC
1250 H Street, NW, Suite 850
Washington, DC 20005


Sidney L. Strickland, Jr.

VERIFICATION

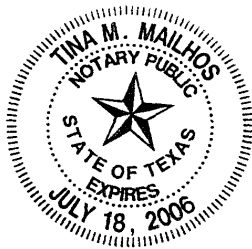
STATE OF TEXAS)
) ss
COUNTY OF TARRANT)

Richard A. Batie makes oath and says he is manager of Network Development in the Network Development Department of BNSF Railway Company; that he has been authorized by the Applicant to verify and file with the Surface Transportation Board the foregoing Verified Statement concerning STB Docket Number AB-6 (Sub-Nos. 335X and 346X), Burlington Northern Railroad Company – Abandonment Exemption – Klickitat County, Washington; that he has knowledge of the facts and matters relied upon in this Verified Statement; and that all representations set forth therein are true and correct to the best of his knowledge, information, and belief.

Richard A. Batie

Richard A. Batie
Manager, Network Development

Subscribed and sworn to before me this 4th day of March, 2005.



Tina M. Mailhos
Notary Public

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**DOCKET AB-6
(Sub-No. 335X)**

**ABANDONMENT OF A LINE OF RAILROAD BETWEEN M.P. 13.80 NEAR
KLICKITAT, AND M.P. 42.11 NEAR GOLDENDALE, IN KLICKITAT
COUNTY, WASHINGTON**

**DOCKET AB-6
(Sub-No. 346X)**

**ABANDONMENT OF A LINE OF RAILROAD BETWEEN M.P. -0.10 NEAR
LYLE AND M.P. 13.80 NEAR KLICKITAT, WASHINGTON IN KLICKITAT
COUNTY, WASHINGTON**

VERIFIED STATEMENT OF RICHARD A. BATIE

My name is Richard A. Batie and I am Manager Network Development in the Network Development Department of BNSF Railway (BNSF). My business address is 2500 Lou Menk Drive, Fort Worth, Texas 76131.

I have been employed by BNSF and its predecessor companies since September, 1968, when I started in the traffic department of the former Northern Pacific Railway (NP) at Seattle, Washington. In 1969, I relocated to St Paul, Minnesota. In March 1970, the

former NP was merged into the Burlington Northern Railroad (BN). In January, 1982, I was named Manager, Line Evaluation and have been involved in branch line abandonments since that time. In July of 1984, I relocated to Fort Worth, Texas, when BN moved its marketing department to Fort Worth. In 1995, the former BN merged with The Atchison Topeka and Santa Fe Railway to become The Burlington Northern and Santa Fe Railway. On January 20, 2005, The Burlington Northern and Santa Fe Railway changed its name to BNSF Railway (BNSF).

This proceeding involves the former Lyle – Goldendale, WA line in Klickitat County, Washington (see Exhibit A). The former BN filed the line for abandonment in two parts in 1991 and 1992. Parts of both lines were railbanked with the Rails to Trails Conservancy. The trail is now owned by the Washington State Parks and Recreation Commission and the U S Forest Service oversees the railbanked line. The railbanked line is now called the Klickitat Trail.

The Klickitat Trail starts at Lyle which is located within the Columbia River National Scenic Area. The Columbia River National Scenic Area is located within The Columbia River Gorge. This is one of the most scenic areas of the United States. The Klickitat Trail follows BNSF's former Lyle – Goldendale line from State Highway 14 at Lyle up the Klickitat River and Swale Canyon to Warwick, a distance of approximately 31 miles. When the former BN line from Lyle to Goldendale emerged from Swale Canyon near Warwick, it crossed grain fields on an upper plain and went another 11 miles to Goldendale. Along the Klickitat River between Lyle and Klickitat, local Native

American Indians continue fish the Klickitat River for salmon as they have done for generations.

The first part of the line to be filed for abandonment was the 28.30 mile Klickitat (Milepost 13.80) to Goldendale, WA (Milepost 42.11) line which was filed for abandonment on September 25, 1991 (Docket No. AB-6 (Sub-No. 335X)). The 17 mile portion of this line from Klickitat (Milepost 13.80) to the end of Swale Canyon at Warwick (Milepost 30.80) was railbanked with the Rails to Trails Conservancy on August 23, 1993. The approximate 11.3 mile portion of the line from Warwick to the end of the line at Goldendale was not railbanked. This last part of the line diagonally crossed grain fields on an upper plain where adjacent farmers wanted to square up their fields rather than have a recreational trail crossing them. Hence, only the portion of the line from Lyle to Warwick which follows the Klickitat River and Swale Canyon was railbanked.

The second part of the line is the 13.90 mile Lyle (Milepost -0.10) to Klickitat, WA (Milepost 13.80) line which was filed for abandonment on December 31, 1992 (Docket AB-6 (Sub-No. 346X)). On August 23, 1993, the former BN and the Rails to Trails Conservancy entered into a Railbanking Agreement for the 13.90 mile Lyle – Klickitat line. On February 16, 1994, an Amendment to the Railbanking Agreement was entered into which changed the starting point of the Railbanking Agreement from Milepost -0.10 to Milepost 0.37, a distance of approximately 0.47 mile. The reason for the Amendment and the change in the starting Milepost of the Klickitat Trail was that State Highway 14 is

located at approximately Milepost 0.37. By keeping pedestrian traffic on the north side of State Highway 14, the trailhead to the Klickitat Trail is safer. Also, this keeps pedestrian traffic further removed from BNSF's high speed and heavily used main line. Following further study on this matter, the start of the Klickitat Trail is actually located at Milepost 0.39 which is on the north side of State Highway 14 at Lyle rather than at Milepost 0.37. The legal description in the deed shows a start of the Klickitat Trail at the north side of State Highway 14 at Lyle. Since the legal description is the prevailing document, for matters in this Verified Statement, I will use Milepost 0.39 for the start of the Klickitat Trail rather than Milepost 0.37 (which is listed in the Amendment to Railbanking Agreement dated February 16, 1994).

As of the date of the February 16, 1994 Amendment to the Railbanking Agreement, the portions of the Lyle – Goldendale, WA lines that were filed for abandonment and railbanked extended from Milepost 0.39 at Lyle to Milepost 30.80 near the end of Swale Canyon, a distance of approximately 30.41 miles. This 30.41 miles of railbanked right of way constitutes the Klickitat Trail.

I will now address my comments to the first portion of the line at Lyle between Milepost -0.10 and Milepost 0.39. This first 0.49 mile of the former Lyle - Goldendale line is not part of the Klickitat Trail but part of it near State Highway 14 is the subject of this proceeding.

On May 29, 2003, BNSF sold 0.728 acres of excess BNSF real estate at Lyle to the Rutledge Hotel Company. This sale extends from Milepost 0.27 to Milepost 0.38 and consists of the northeasterly 50 feet of the right of way between the two mileposts. Following this sale, BNSF retained at least 50 feet of the right of way which connected the Klickitat Trail with BNSF's main line at Lyle.

On August 5, 2004, BNSF sold an additional 0.07 acre of excess BNSF real estate at Lyle to the Rutledge Hotel Company. This sale extended from Milepost 0.33 to Milepost 0.38 and was shaped as a sliver. The sale was 0 feet wide at Milepost 0.33 and 21.59 feet in width at the south side of State Highway 14. Following the second sale to Rutledge Hotel Company, BNSF retained a 28.41 foot wide corridor which connects the Klickitat Trail with BNSF's main line and the National Rail System.

Exhibit B attached highlights the start of the Lyle – Klickitat line at Lyle, Washington. BNSF's main line between Vancouver and Pasco, WA is shown in black as it parallels the Columbia River. The 0.49 mile portion of the Lyle – Klickitat line that BNSF retained at Lyle following the abandonment filings and subsequent railbanking of portions of the Lyle to Goldendale line is shown in red. The Klickitat Trail is shown in a black hatched line.

Exhibit C attached shows a Real Estate Department print of a portion of the Lyle – Klickitat line at Lyle where the two sales of excess BNSF real estate were sold to Rutledge Hotel Company. BNSF's right of way is outlined in black and BNSF's main

line paralleling the Columbia River is shown in dashed black. In addition, a dashed black line is shown connecting BNSF's main line to the Klickitat Trail. The Klickitat Trail is shown as a black cross hatched line and is outlined in green. The first sale of excess right of way to Rutledge Hotel is shown outlined in red. The second sale of excess right of way to Rutledge Hotel is shown in blue. Exhibit C shows the 28.41 foot wide corridor which connects the Klickitat Trail with the BNSF's main line and the National Rail System. BNSF continues to retain an easement through State Highway 14 and this allows direct connectivity of the Klickitat Trail with the National Rail System.

BNSF currently owns 28.41 feet of right of way on the southwest side of State Highway 14 at Milepost 0.38. BNSF used to have a 100 foot wide right of way at Milepost 0.38, but when BNSF made the first sale of excess right of way to the Rutledge Hotel Company, it sold the northeasterly 50 feet of right of way between Milepost 0.27 and Milepost 0.38. Following this initial sale, BNSF's right of way connecting to the Klickitat Trail south of State Highway 14 was reduced from 100 feet in width to 50 feet in width. Later on, when BNSF sold an additional "sliver" of excess right of way between Milepost 0.33 and Milepost 0.38 to the Rutledge Hotel, BNSF's right of way connecting to the Klickitat Trail was reduced from 50 feet in width to 28.41 feet in width.

Amending the Railbanking Agreement to start the Klickitat Trail on the north side of Highway 14 keeps pedestrian traffic much safer and away from dangerous train operations on a heavily used BNSF main line. Exhibit D shows the former Lyle to Goldendale right of way near Milepost -0.10 at Lyle. Also, by starting the trail on the

north side of State Highway 14, pedestrian traffic does not have to cross a busy state highway. Exhibit E is a photo taken near the start of the Klickitat Trail. State Highway 142 is shown on the right side of Exhibit E.

On February 4, 2005 Petitioners Tracy and Lorraine Zoller, William Giersch, David and Kristen Mattson, and Allan Tooke ("Petitioners") petitioned to re-open this proceeding on the grounds that BNSF has sold its interest to full-width right-of-way of two segments of a railroad line located in Klickitat County, Washington and thereby disconnected the remaining portion of the Klickitat branch line that had been "railbanked" under the Trails Act, for potential future restoration of railroad use, from the Interstate Railway System.

Contrary to what opponents allege, the Klickitat Trail is not severed from the National Rail System. The Klickitat Trail has never been severed from the National Rail System and BNSF has no intention of severing the Klickitat Trail from the National Rail System in the future. BNSF has made two real estate sales of excess BNSF right of way near the start of the Klickitat Trail at Lyle. However, adjacent to both sales, a real estate corridor was retained which connects the Klickitat Trail to the National Rail System (See Exhibit C).

Cecilia Fex, counsel for Petitioners made a statement in her "Factual Background" (Page 5) which reads as follows:

“Following the above referenced sales to RTC, BNSF broke any remaining connection that had existed between the end-point at Lyle and the still-operating BNSF right-of-way that is located south of Highway 14.”

Such an alleged “break” in the connectivity of the Klickitat Trail to the National Rail System never took place. Fex has her facts confused and mixed up because she relies on an incorrect exhibit furnished by Craig Trummel (See Trummel, Exhibit C). This incorrect exhibit leads Fex to an incorrect conclusion.

Craig Trummel submitted a “Declaration” in this proceeding and followed it up with an inaccurate schematic map (See Trummel, Exhibit C) of Lyle near the start of the Klickitat Trail. Trummel fails to show on his schematic map which direction is north. This leaves the Board to assume that north is on the top of Trummel’s Exhibit C and south is on the bottom of the exhibit. Trummel goes on to describe nine parcels of real estate in the area of the start of the Klickitat Trail as follows:

Parcel 1 – Trummel describes Parcel 1 as the Klickitat Trail located north of State Highway 14 (See Trummel, page 2, item 6).

Parcel 2 – Trummel describes Parcel 2 as State Highway 14 (See Trummel, page 3, item 9).

Parcel 3 – Trummel describes Parcel 3 as private property owned by Greg Colt Land Brokers, Inc. (See Trummel, page 3, item 10). Trummel’s schematic Exhibit C

shows Parcel 3 as being southwest of State Highway 14 and west of the former alignment of BN's Lyle – Goldendale line.

Parcel 4 – Trummel describes Parcel 4 as abutting the south edge of Highway 14 and owned by Western Estates, Inc. (Western Estates, Inc. is a successor to Rutledge Hotel) (See Trummel, pages 3 and 4, item 11).

Parcel 5 – Trummel describes Parcel 5 as being owned by Western Estates, Inc. and east and south of the property owned by Greg Colt Land Brokers, Inc. (See Trummel, page 4, item 12).

Parcel 6 – Trummel describes Parcel 6 as a parcel of real estate abutting the northeast part of Parcel 5 and abutting the south edge of Highway 14 (See Trummel, pages 4 and 5, item 13).

Parcel 7 – Trummel describes Parcel 7 as real estate abutting the south edge of Highway 14 and located south of Parcel 6. Trummel claims Parcel 7 is owned by Western Estates, Inc. (See Trummel, page 5, item 14).

Parcel 8 – Trummel describes Parcel 8 as BNSF's railroad right of way in Klickitat County (See Trummel, pages 5 and 6, item 17).

Parcel 9 – Trummel describes Parcel 9 as the Centerville Highway (See Trummel, page 6, item 18).

Here is where Trummel has made errors in his "Declaration" and on his schematic map (Trummel Exhibit C):

Parcel 2 – Trummel describes Parcel 2 as being State Highway 14. Trummel states that “Highway 14 is located immediately south of the trail and runs in a north-east/south-west direction.” (See Trummel, page 3, item 9). Washington State Highway 14 runs in a northwest/southeast direction through Lyle and not in a northeast/southwest direction (See Batie Exhibit B, U S Geological Service map of Lyle and the surrounding area).

Parcel 3 – Trummel describes Parcel 3 as being owned by Greg Colt Land Brokers, Inc. However, Trummel’s schematic Exhibit C shows Parcel 3 abutting Parcel 4. This is not the case. Trummel’s schematic Exhibit C is drawn wrong. Between Parcels 3 and 4 there is a minimum of 28.41 feet of BNSF owned right of way that connects the Klickitat Trail with BNSF’s main line and the National Rail System (See Batie Exhibit C).

Parcel 4 – Trummel states “To the east of the property of Greg Colt Land Brokers, Inc. and abutting the south edge of Highway 14, is property owned by Western Estates, Inc.” (See Trummel pages 3 and 4, item 11). Here again, Trummel has his facts wrong. Trummel’s schematic Exhibit C is drawn incorrectly. Parcel 3 and 4 do not abut each other. Between Parcels 3 and 4 BNSF owns right of way which continues to connect the Klicitat Trail with the National Rail System.

Parcel 5 – Trummel characterizes Parcel 5 as “East and south of property of Greg Colt Land Brokers, Inc., is property also owned by Western Estates, Inc.” (See Trummel, page 4, item 12). Trummel’s schematic Exhibit C does not portray an accurate description of Parcel 5. Parcel 5 is a 50 foot wide piece of excess BNSF right of way that

does not come to a point with zero width at State Highway 14. Parcel 5 has 50 feet of width on the south edge of State Highway 14 (See Batie Exhibit C).

Parcel 8 – Trummel describes Parcel 8 as “Marked on the map as Parcel 8 is the railroad right-of-way that, to my knowledge, is still operating in Klickitat County by BNSF.” (See Trummel, page 5 and 6, item 17). Trummel’s schematic Exhibit C fails to show the part of BNSF’s right of way at Lyle that connects the Klickitat Trail to the National Rail System. Trummel attempts here to mislead the Board with inaccurate information so it can come to the wrong conclusion concerning connectivity of the Klickitat Trail to the National Rail System. Trummel’s assertion that the Klickitat Trail has been severed from the National Rail System is based on wrong conclusions from an incorrect schematic map. Trummel’s Declaration concerning the connectivity of the Klickitat Trail to the National Rail System is just not true.

Parcel 9 – Trummel describes Parcel 9 as the Centerville Highway (See Trummel, page 6, item 18. Here again, Trummel has made another mistake. The road paralleling the Klickitat Trail near Lyle is State Highway 142 and not the Centerville Highway. The Centerville Highway comes into Lyle from the north further to the east in Lyle (See Batie Exhibit B).

Since Trummel’s Schematic Exhibit C is an inaccurate portrayal of several of the real estate parcels near the Klickitat Trail and State Highway 14, it follows as to why Trummel has come to the wrong conclusions about the connectivity of the Klickitat Trail to the National Rail System.

This attack by Trommel on the alleged lack of connectivity of the Klickitat Trail to the National Rail System is a misguided effort to undermine the integrity of the National Trails Act, the Surface Transportation Board's jurisdiction of railbanked lines and the Klickitat Trail, which is under federal control and oversight.

In sum, BNSF made two sales of portions of excess right of way between BNSF's main line at Lyle and the start of the Klickitat Trail. However, as noted above, following both sales, connectivity of the Klickitat Trail to BNSF's main line at Lyle and the National Rail System was retained should rail service need to be reactivated over the Klickitat Trail in the future. The opponents in this case have no basis for their assumption that the Klickitat Trail has been severed from the National Rail System.

The Klickitat Trail has been and continues to remain connected to BNSF's main line at Lyle and the National Rail System.

DOCKET AB-6
(Sub-No. 335X and 346X)

EXHIBIT A BNSF'S FORMER LYLE – GOLDENDALE, WASHINGTON LINE

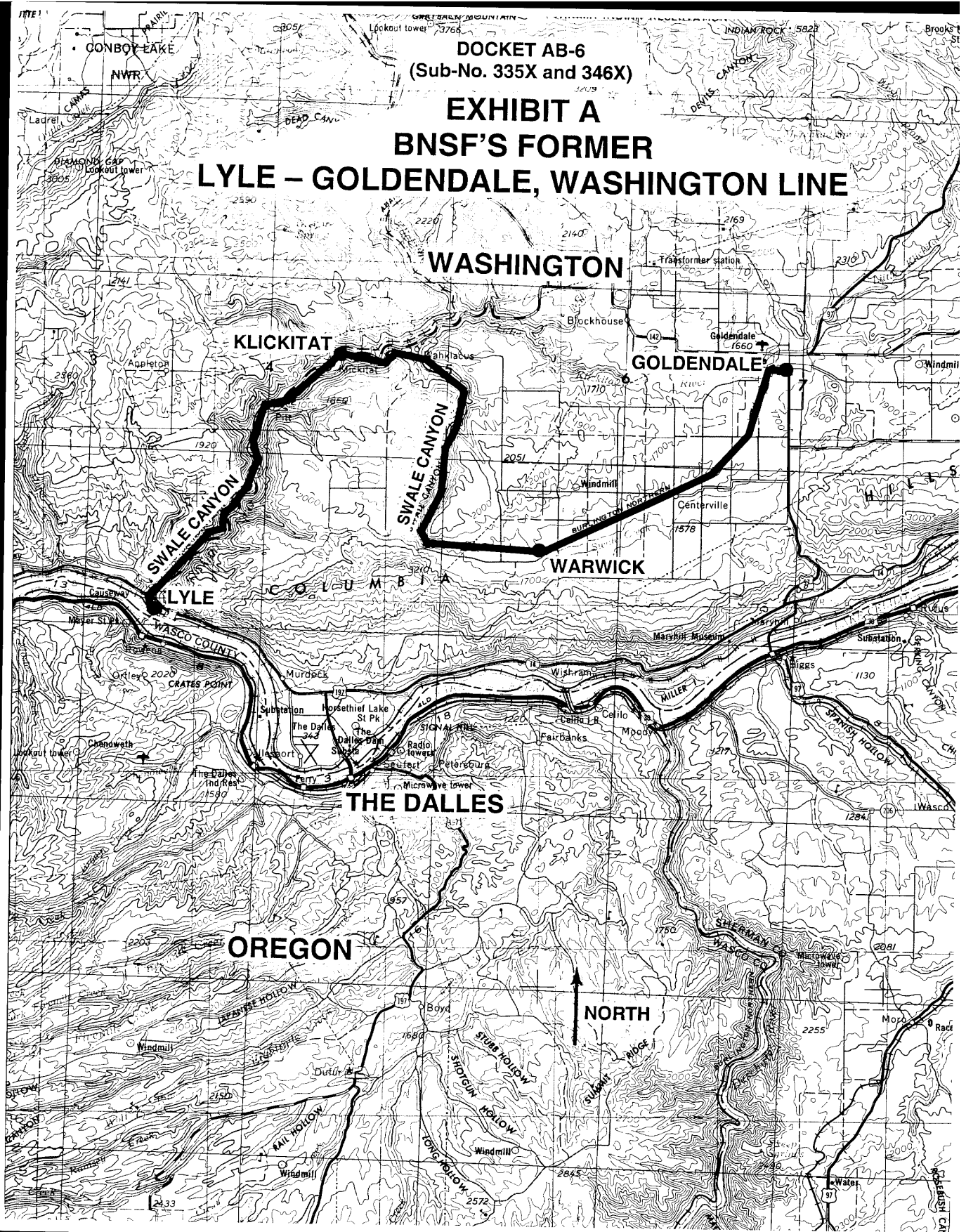


EXHIBIT B
LYLE, WASHINGTON

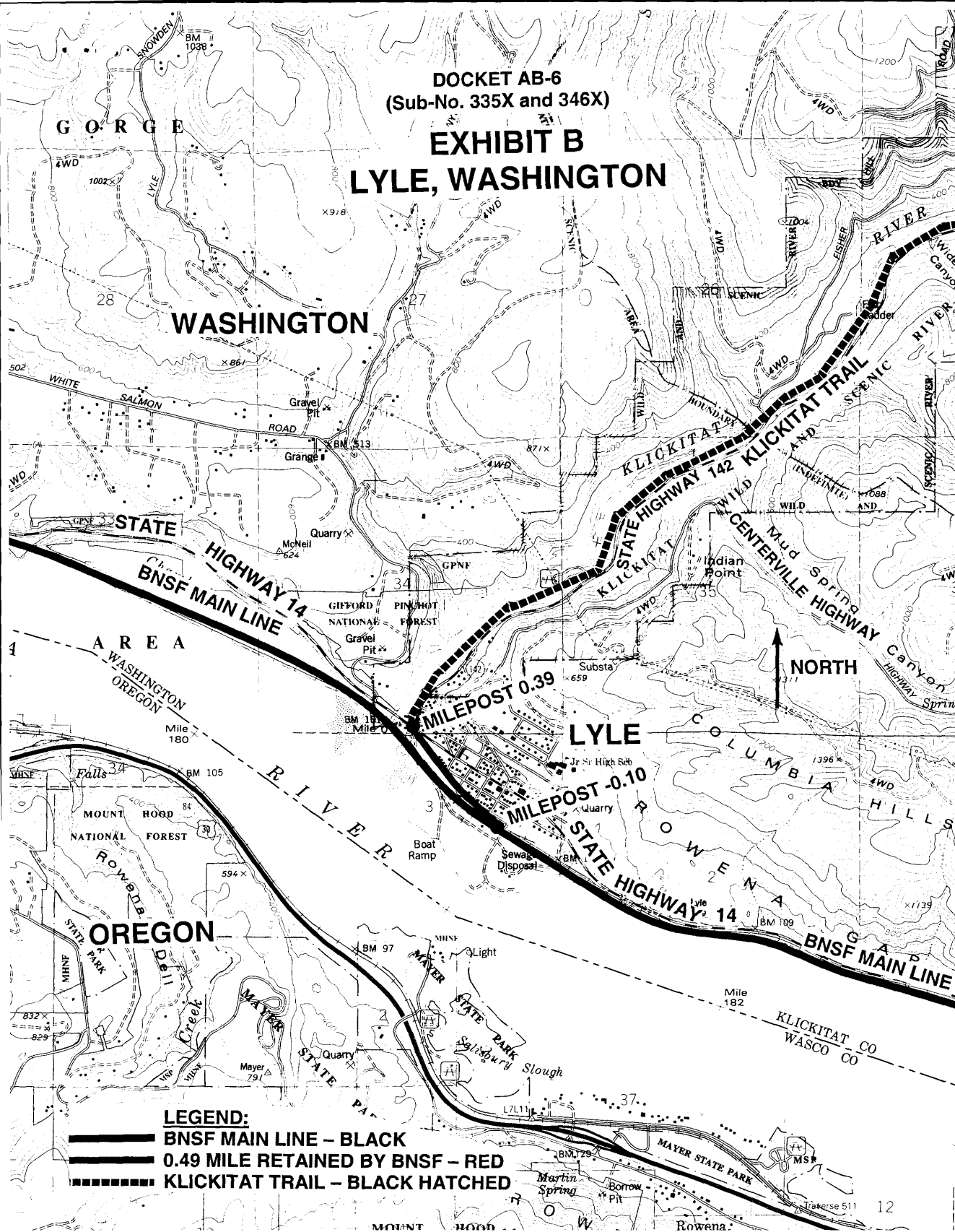
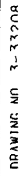


EXHIBIT C
REAL ESTATE PRINT OF BNSF
RIGHT OF WAY AT LYLE, WASHINGTON



DOCKET AB-6
(Sub-No. 335X and 346X)

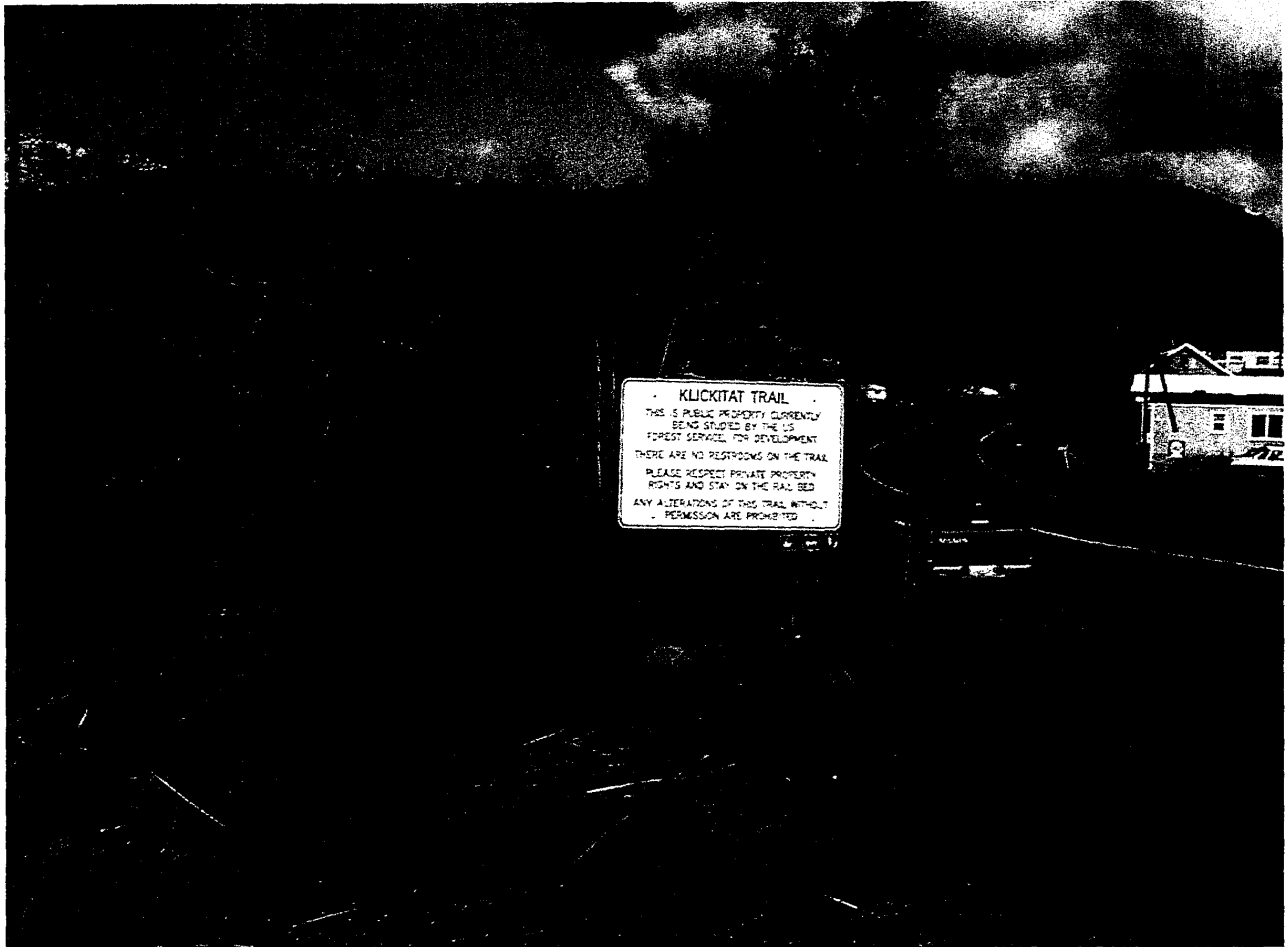
EXHIBIT D



RIGHT OF WAY OF BNSF'S FORMER LYLE - KLICKITAT, WA BRANCH
LINE NEAR MILEPOST -0.10. BNSF'S MAIN LINE IS SHOWN ON RIGHT
SIDE OF THE PICTURE. THE FIGURE IN THE FOREGROUND IS IN THE
MIDDLE OF THE FORMER LYLE - KLICKITAT RIGHT OF WAY. THIS VIEW
LOOKS EASTWARD WITH THE TOWN OF LYLE ON THE LEFT.

**DOCKET AB-6
(Sub-No. 335X and 346X)**

EXHIBIT E



START OF THE KCLICKITAT TRAIL AT LYLE NEAR MILEPOST 0.39. THIS VIEW LOOKS NORTH. THE SIGN READS "KCLICKITAT TRAIL. THIS IS PUBLIC PROPERTY CURRENTLY BEING STUDIED BY THE U S FOREST SERVICE FOR DEVELOPMENT. THERE ARE NO RESTROOMS ON THE TRAIL. PLEASE RESPECT PRIVATE PROPERTY RIGHTS AND STAY ON THE RAIL BED. ANY ALTERATIONS OF THIS TRAIL WITHOUT PERMISSION ARE PROHIBITED."